

<p>The Chief Procurement Officer is in the process of reviewing the request form the Department of <u>Attorney General</u> for exemption from Chapter 103D, HRS, for the following goods, services, or construction:</p> <p>Bond Counsel in connection with the issuance of approximately \$225,000,000 in new money State of Hawaii General Obligation Bonds and an as yet undetermined amount of State of Hawaii General Obligation Refunding Bonds.</p>			
<p><b>Vendor:</b> Elaine R. Bayus, Esq.</p> <p><b>Address:</b> Orrick Herrington &amp; Sutcliffe, LLP Old Federal Reserve Bank Building 400 Sansome Street San Francisco, California 94111</p>			
<b>Term of Contract:</b>	<b>From:</b>  Date of CPO Approval	<b>To:</b>  December 31, 2004	<b>Cost:</b>  \$79,000.00
<b>Direct any inquiries to:</b>			
<b>Department:</b> Attorney General		<b>Phone Number:</b> 586-0618	
<b>Contact Name/Title:</b> Diane Erickson		<b>Fax Number:</b> 586-1372	
<b>Address:</b> 425 Queen Street Honolulu, Hawaii 96813			

A copy of this notice of exemption from Chapter 103D, HRS, shall be posted by the Chief Procurement Officer and the purchasing agency in an area accessible to the public, at least seven (7) calendar days from the date this notice was posted to:

Chief Procurement Officer  
Office/Agency \_\_\_\_\_  
Address \_\_\_\_\_

PE-04-29-M

**STATE OF HAWAII**  
**REQUEST FOR EXEMPTION FROM CHAPTER 103D, HRS**

'04 MAR 11 A 8:30

**TO:** Chief Procurement Officer

**FROM:** Attorney General  
(Department/Division Agency)

STATE PROCUREMENT OFFICE  
STATE OF HAWAII

Pursuant to § 103D-102(b)(5), HRS, and Chapter 3-120, HAR, the Department requests a procurement exemption to purchase the following:

**Description of goods, services, or construction:**

Legal Services as Bond Counsel in connection with the issuance, sale and delivery of approximately \$225,000,000 in new money State of Hawaii General Obligation Bonds and an as yet undetermined amount of State of Hawaii General Obligation Refunding Bonds ( "Bonds"), including advising the State of Hawaii with respect to its rights, duties and obligations in connection with the transaction; requirements of the Internal Revenue Code; exemption from federal taxation of interest on the bonds; and related matters.

**Vendor:**

Elaine R. Bayus, Esq.

**Cost:**

Fixed fee of \$70,000.00 plus a cap on reimbursable out-of-pocket expenses of \$9,000.00.

**Term of Contract:**

**From:** Upon CPO Approval

**To:** December 31, 2004

**Explaining describing how procurement by competitive means is either not practicable or not advantageous to the State:**

Ms. Bayus and her firm are nationally recognized bond counsel. National recognition of bond counsel expertise is important because the recognition means that the individual and his or her firm have the requisite breadth and depth of knowledge and expertise in the area and have substantial backup and resources to respond to the kinds of issues that would arise in complicated bond transactions. Ms. Bayus served as bond counsel in connection with the issuance of the State's General Obligation Bonds, Series CV/CW, which closed on August 23, 2001, and Series CX/CY, which closed on February 27, 2003. Both transactions involved a mixture of new money and refunding bonds. Because of her prior experience with similar transactions and with the Department of Budget and Finance, Ms. Bayus is well versed in the kinds of issues that arise in financings of this type, is familiar with how the State operates, and has been efficient and effective in representing the State's interests. There are only a few local bond counsel (and only two are nationally recognized), but none of them have ever been engaged by the State to serve as bond counsel on these types of transactions that involve a refunding component. Consequently, hiring local counsel would not be practicable or advantageous to the State. In 2003, the Legislature amended Hawaii Revised Statutes, chapter 103D, the State Procurement Code. (See, Act 52, SLH 2003) While Ms. Bayus' firm could obtain a certificate of good standing from its home state, and could conceivably establish a local office, if that were required, the local office could not perform the services required by the contract unless it is staffed by someone who is licensed to practice law in Hawaii. The statute, together with the personal nature of the services, would require Ms. Bayus herself to apply for, take, and pass the Hawaii bar examination and become licensed to practice law in Hawaii. Becoming licensed to practice law in Hawaii is costly and time consuming. Moreover, because the bar exam is given only twice a year, it is impractical to require nationally recognized bond counsel to be licensed in Hawaii. Not only would the local staff have to be licensed to practice law in Hawaii, but also they would have to have bond counsel expertise and experience. As stated above, there are only two firms in Hawaii that have some national recognition as bond counsel, but hiring these firms would not be practicable or advantageous to the State when more experienced bond counsel is available.

Because of the specialized nature of bond counsel services and the need to obtain services from nationally recognized bond counsel, and because of Ms. Bayus' past experience, it would not be practicable or advantageous to the State to obtain those services competitively.

**Details of the process or procedure to be followed in selecting the vendor to ensure maximum fair and open competition as practicable:**

Due to the highly specialized nature of the work required, and her past experience of successfully performing such work for the State, the Attorney General and the Department of Budget and Finance (the using agency) would like to retain Ms. Bayus for this project over other nationally recognized bond counsel.

**A description of the agency's internal controls and approval requirements for the exemption procurement:**

The contract for legal services will be conducted under the supervision of the Attorney General and subject to his final approval.

**A list of agency personnel, by position title, who will be involved in the approval process and administration of the contract:**

Attorney General

**Direct questions to:**

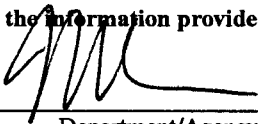
Mark J. Bennett, Attorney General

**Phone Number:**

(808) 586-1500

This exemption should be considered for list of exemptions attached to Chapter 3-120, HAR: Yes: ☒ No: ☐

I certify that the information provided above is to the best of my knowledge, true and correct.



Department/Agency Head

MAR 10 2004

Date

**Chief Procurement Officer's Comments:**

Please ensure adherence to applicable administrative requirements.

\_\_\_\_ Approved

\_\_\_\_ Denied

\_\_\_\_  
Chief Procurement Officer

\_\_\_\_  
Date

cc: Administrator  
State Procurement